Jeffrey M. Swarts
308 South Cedar Street
Danville, OH 43014-0289

COMMENT: PROCEEDING WTB 16-290

As a former shareholder (237,000 common shares) of Terrestar (TSC), who took part in the company's bankruptcy and sent the FCC copies of numerous court filings, I respectfully request that the Commission *deny* Terrestar's request for reconsideration in Proceeding 16-290.

TSC enticed investors with fraudulent valuations of its 2.0 and 1.4 GHz spectrum licenses according to the company's own bankruptcy filings. For example, the 1.4 GHz spectrum was valued by Jefferies & Company pre-petition in a February 29, 2008 SEC-filed Schedule 14C-Pre. That valuation, which permitted the issue of Preferred stock, found "… low, median and high projected values of the 1.4 GHz Band Spectrum to the Company were $533.4 million, $670.3 million and $856.2 million, or $0.23, $0.29 and $0.37 per MHz POP. However, throughout the Terrestar bankruptcy, the debtors argued that it was only worth "$0.06 per MHz POP", based upon a sweetheart lease to Harbinger and Lightsquared that provided about $2 million in revenue per month.

Subsequently, Lightsquared filed for bankruptcy as well, due to its inability to execute its business plan. Its high power base stations would have caused harmful interference to GPS receivers with inadequate pass-band filters. Lightsquared's 1.6 GHz spectrum was also formerly licensed to Terrestar. So, Terrestar's current *mia culpa* that management didn't know about interference to WMTS devices is not credible.

For 5-years plus management proceeded with a business plan to lease the 1.4 GHz spectrum for high-power smart meter applications without bothering to test devices in adjacent low-power bands. Willful ignorance is *not* adequate justification for failure to deploy a network under Part 27. The FCC makes its rules known when a license is auctioned. The onus is on the licensee to ensure that its business plan is viable and *to proceed expeditiously* to deploy its network.

In the 2008 14-C Pre Terrestar stated:

> "The 1.4GHz Band Spectrum would provide the Company with additional capacity to both augment existing products and services and enter new markets and product segments. The Company contemplates using the 1.4 GHz Band Spectrum to enter the emerging femtocell market, thereby alleviating certain spectrum interference issues and providing a quality of service level the

> company believes is not attainable with existing spectrum. Utilization of the 1.4 GHz Band Spectrum for this application would require additional investment for build out, as well as further investment in the existing chipset/software platform."

So clearly, in 2008 Terrestar was making the same public service arguments and plans to deploy femtocells that it is making in its 2016 petition for reconsideration. They understood then that they needed to continue investing in the chipset and software to be used in the network. This should have included professional OOBE and OOBR testing in adjacent bands and apparently it did not. Willfully ignoring the need for such testing is not adequate justification for a waiver extension.

Further, entering bankruptcy is complicated, but it is not adequate justification for a 3-year extension of the 10-year build-out rule under Part 27. Terrestar management says nothing about their callous disregard for their own shareholders' investments while in bankruptcy. They say nothing about the write down of the 1.4 GHz spectrum in bankruptcy to between "160 million and 235 million, or approximately six to nine cents per MHz POP to the TSC debtors" as stated by the debtors' financial advisor during Confirmation. It is in sharp contrast to the *minimum valuation* of the 2008 14-C Pre of $533.4 million. The minimum spectrum valuation was just below the total liabilities of $544.5 million listed in a September 2012 Monthly Operating Report released on September 22, 2012 – just prior to the Confirmation Hearing. Multiple contemporaneous comparable spectrum transactions showing greater values were submitted to the Court and opposed by the debtors. The Court denied multiple requests for an examiner and official equity committee. Ultimately, it found for the debtors and against the shareholders who were unrepresented.

Post-Confirmation, John Dooley and Jarvinian – hired by the reorganized debtors – provided a supplemental valuation of the 1.4 GHz band on 9/13/2013. In it – one year after Confirmation and 3-years prior to the instant waiver request proceeding – Mr. Dooley described four valuation scenarios, including AWS-4 comparable transactions from $0.23 - $0.80 per MHz POP. These valuations are similar to those provided by Jefferies in the 2008 14-C Pre. Based upon these valuations, the reorganized TSC has abandoned their efforts to refarm the spectrum. They now seek to change the company's multi-year business plan to provide supplemental WMTS bandwidth.

The irony of these valuations is somewhat opaque to the casual observer, but not to those who invested significant life savings into Terrestar Corporation and its subsidiary Terrestar Networks (TSN). TSN was subsequently purchased by Charles Ergen and Echostar in a Court-sponsored auction for $1.375 billion. That price included two state-of-the-art GEO satellites and the 2.0

GHz spectrum, all of which lays fallow 7-years later. There has been *no public interest benefit* to the FCC's licensing of any of these bands after more than 10-years.

What would be a *just and substantial public interest* outcome to these spectrum warehousing investment strategies?

1. The FCC should deny the Terrestar waiver request under Part 27 and recapture the spectrum.
2. The FCC should then award 1.4 GHz bands in question to the current WMTS spectrum licensees, since the nation's treasury has already been paid for the 1.4 GHz spectrum with the results of its Auction 69. This would provide the needed spectrum benefit to WMTS users, device and network providers.
3. Alternatively, the FCC could grant the Terrestar waiver request on the condition that Terrestar issue warrants to prior TSTR shareholders with a number and strike price commensurate with the bankruptcy liabilities of $544.5 million – with consideration for lost interest. Further, in the event that the FCC approves this approach, the company should be required to issue an IPO and become a public company once again.
4. Under the Character and Candor rules of FCC licensees, prior management and officers should barred from positions as officers in any future licensee.

Respectfully submitted

/s/ Jeffrey M. Swarts
February 16, 2018

308 South Cedar Street
Danville, OH 43014-0289
(740)-599-6516
swarts@ecr.net